

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1254 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No.

2. To be referred to the Reporter or not? No. @@

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

STATE OF GUJARAT

Versus

VIRAMBHAI BHEMABHAI BHARVAD

Appearance:

MR MA BUKHARI, APP, for appellant.

MR KB ANANDJIWALA for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS and

MR.JUSTICE A.M.KAPADIA

Date of decision: 24/02/99

ORAL JUDGEMENT

PER: K.R.VYAS,J

The State of Gujarat has preferred this appeal challenging the judgment and order of acquittal dated 26-8-92 passed in Special Criminal Case No. 3/92 by the learned Additional Sessions Judge, Sabarkantha , Camp at Modasa, acquitting the present respondents of the alleged offences punishable under Sections 323, 504, 506 (2) rerad with Section 114 of the Indian Penal Code and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Pujabhai Dhulabhai Vankar (PW 2, Ex.15) is the complainant in the present case. The complainant is an agriculturist and he was cultivating the agricultural field known as Nathawada-na-Kuva of one Vastabhai Paragbhai on crop-share basis and had sown Tuver crop therein . According to him on 17-12-1991 when he was in the field, the respondent-accused were passing through the road adjacent to the said field with their live stock. The complainant advised the respondents to see that the live stock did not enter his field. On this respondent No.1 got excited and inflicted a stick blow on the head of the complainant. Thereafter he further gave two stick blows on his hand and legs. Respondent No.1 also abused the complainant and gave threat of killing him. Respondent No.2 gave fist blows to the complainant. According to the complainant, respondent No.2 used filthy language and abused him. Kalabhai Maganbhai (PW 6, Ex.21) in the mean time came there by his camel-cart. On seeing him both the respondents ran away. Kalabhai took the complainant in his camel-cart to Sakariya village and dropped him at the ST stand and also informed the relatives of the complainant about the incident. The complainant was taken to Modasa Rural Police Station by Kalabhai and Maheshbhai, brother of the complainant, where the complainant gave his complaint, Ex.16. The complainant was thereafter taken to the public hospital where he was admitted as an indoor patient for ten days.

The prosecution , in order to establish its case has also examined Dr. Piyush Shah (PW 1, Ex.12) who examined the complainant. According to Dr. Shah he noticed two injuries viz: a wound on scalp right side

and laceration and swelling on the right side hand on upper arm and fore arm. Accordingly he issued the certificate, Ex.14. Dr. Shah in his cross-examination has clearly admitted that injury No.1 is possible if a pointed stone is hit on the head. He has also admitted that injury No.2 is possible by fall. According to the doctor, stick blow may cause CLW type injury. In view of the medical evidence on record, we feel that the say of the complainant is not corroborated by the medical evidence. According to the say of the complainant, he received stick blows on his right side head and on the right hand. These two injuries were in fact noticed by the doctor. However, no other injuries on both the hands and legs as well as fist blows were noticed by the doctor. There were no CLWs on the person of the complainant which would have been possible if at all stick blows as stated by the complainant were inflicted on him. In our opinion either the complainant has exaggerated the incident or was not telling the truth before the Court. Reading the further statement of respondent-accused No.1, we feel that the complainant is suppressing the genesis of the incident. Respondent No.1 Virambhai in his further statement has clearly stated that when he was passing through the field with his live stock, the complainant and PW 6 were giving them abuses. PW 6 on the contrary caught hold of him and the complainant inflicted Dharia blow on the left shoulder of respondent No.1. They also gave fist blows to him. Respondent No.1 in fact filed a complaint against the complainant as well as PW 6 before Sabarpura Police Station vide Ex.31. In view of the cross complaint filed by respondent No.1 against the complainant and since nothing is mentioned about the same in his evidence, we are of the opinion that the complainant has tried to suppress the origin of the incident and, therefore, he is not a truthful and reliable witness. As observed earlier, since his evidence is not corroborated by the medical evidence, the learned Additional Sessions Judge was justified in passing the order of acquittal in favour of the respondents. Since we are in total agreement with the reasoning of the learned Additional Sessions Judge, we see hardly any ground to interfere with the judgment and order of acquittal passed by the learned Additional Sessions Judge.

In the result this appeal fails and is dismissed.

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